IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.755 OF 2005

Bhiku Khashaba Sawant .. Appellant

Versus

Ganpati Dnyanu Kadam & Ors. .. Respondents

Mr.S.R.Nargolkar for appellant

Mr.Kuldeep S.Patil for respondent Nos.1 to 5

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by District Judge, Sangli dated 9.7.2004 dismissing the appeal and confirming the findings recorded by Civil Judge, Junior Division, Vita dated 21.10.1993 decreeing the suit for partition and separate possession.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for partition and separate possession of the respective shares of the properties. The defendant No.1 contested the suit submitting that the suit properties belonged to his mother Janabai, however, he had become owner of the suit properties, as in the year 1982 all the properties were surrendered by his mother in his name. According to the defendants, their mother was intending to give all the properties to defendant no.1 and therefore, she transferred all the properties in favour of defendant no.1 herself by making an application to Gaonkamgar Talathi. It was alleged that he had become owner by adverse possession of the entire property and as such the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the defendant no.1 failed to prove that his mother Janabai transferred all the suit properties except Gat No.86 in his name and that he acquired title to the suit property by virtue of

adverse possession and suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both the parties came to the conclusion that the findings recorded by the trial court were legal and proper on the basis of available evidence and dismissed the Appeal. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. The only issue involved was to the effect that whether the defendant no.1 had proved that Janabai had transferred all the suit properties except Gat N.86 in his favour. However, as recorded by both the courts, there is absolutely no conclusive evidence to hold that the property was transferred in favour of defendant no.1. It is to be noted that the defendant no.1 admitted in his cross examination that such application was given to Talathi but Talathi had not taken any action pursuant to the said application. Similarly, issue of possession of title by adverse possession is also negatived by both the courts below. I need not comment on that issue, especially when the issue of adverse possession is purely question of fact. In my

view, both the courts below have properly appreciated the evidence and have held that the suit deserves to be decreed and as such no interference is necessary by this court.

5. In the result the appeal stands dismissed with no order as to costs. Consequently Civil Application No.1272 of 2005 also stands dismissed with no order as to costs.